



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 29, 2004

Ref: 8Enf-L

Charles W. Talbott
Talbott Farms, Inc.
3782 F ¼ Road
Palisade, CO 81526

Dear Mr. Talbott:

Enclosed is an administrative complaint, seeking penalties for violations of the Worker Protection Standard ("WPS") and other label violations pursuant to the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. On October 31, 2001, EPA sent a Notice of Warning to your business identifying various WPS violations discovered in 2001. This Complaint has been filed because continuing WPS violations at your establishment.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

SIGNED

Eduardo Quintana,
Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. FIFRA WPS Policy
5. SBREFA Information Sheet

cc. Tim Osag, 8Enf-T



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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **FIFRA-08-2004-0013**

In the Matter of:)	
)	
Bruce Talbott)	PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
Talbott Farms, Inc.)	
3782 F 1/4 Road)	
Palisade, CO 81526,)	
)	
Respondent)	

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. section 136l(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by using registered pesticides in a manner inconsistent with their labels, and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18th St; Suite 300; Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.
FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS

MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$37,200) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800- 227-8917; extension 6924 or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

8. Respondent, Talbott Farms, Inc., is incorporated in the State of Colorado.
9. Respondent is a "person" within the meaning of section 2(s) of FIFRA, and therefore subject to the requirements of the statute and/or regulations.
10. Respondent operates a farm located at 3782 F 1/4 Road, Palisade, Colorado and grows various fruits.
11. Respondent hires workers to perform activities related to the production of crops, including but not limited to apples, pears, and wine grapes.

12. Respondent is an “agricultural employer” within the meaning of 40 C.F.R. section 170.3.

13. Respondent is a “private applicator” or “other person” within the meaning of section 14(a)(2) of FIFRA.

14. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.

15. An authorized EPA employee visited Respondent’s farm with the consent of Respondent on June 6, 2003, to inspect it for compliance with the statute and regulations.

16. On September 5, 2003, EPA issued a Notice of Warning to Respondent for violating FIFRA by using registered pesticides in a manner inconsistent with its labeling. The violations involved the application of pesticides without complying with several requirements of EPA’s Worker Protection Standard (WPS), authorized by 7 U.S.C. section 136w(a)(1) and found at 40 C.F.R. part 170, which was required to be followed per the label directions.

17. An authorized EPA employee again visited Respondent’s farm with the consent of Respondent on June 29, 2004, June 30, 2004, and July 2, 2004 to inspect it for compliance with the statute and regulations.

18. During the inspections “workers,” within the meaning of 40 C.F.R. section 170.3, were present at Respondent’s farm.

19. Each of the pesticides described below is a registered pesticide and may only be used in accordance with label directions, including complying with the WPS codified at 40 C.F.R. part 170:

Savey 50 DF EPA Reg. No. 10163-250;
Spintor 2SC, EPA Reg. No. 62719-294;
Surround WP, EPA Reg. No. 70060-14;
Warrior, EPA Reg. No. 100-1112;

20. The WPS requires employers to display specific information about applications of pesticides when workers are at the farm for 30 days after pesticide applications. 40 C.F.R. section 170.122.

21. Each failure to follow the WPS requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA section 12(a)(2)(G).

COUNTS 1-20

22. On June 1, 2004, Respondent applied the pesticide Savey 50 DF at the Anderson, Borini, Frazier, Frye, HCT, Moore, and Wood areas.
23. On June 2, 2004, Respondent applied the pesticide Savey 50 DF at the Dickenson, HCT, TFI (blocks 1N, 25, 2W, 3, and 4), TFI blocks (blocks 5, 6, 7, 8s, and 9), and Unfred areas.
24. On June 3, 2004, Respondent applied the pesticide Savey 50 DF at the EOM, Hosburgh, TFI (blocks 1 and 2E), and TFI (block 21), areas.
25. On June 4, 2004, Respondent applied the pesticide Savey 50 DF at the EOM area.
26. On June 5, 2004, Respondent applied the pesticide Savey 50 DF at the HCT and Zimmat areas.
27. On June 9, 2004, Respondent applied the pesticide Savey 50 DF at the EOM area.
28. On June 29, 2004, and June 30, 2004, Respondent was not displaying specific information about the June 1st, June 2nd, June 3rd, June 4th, June 5th, and June 9th applications of Savey 50 DF (Counts 1-20) as required by the WPS requirement codified in 40 C.F.R. section 170.122.
29. Since Respondent failed to display specific information about the June 1st, June 2nd, June 3rd, June 4th, June 5th, and June 9th applications of the pesticide Savey 50 DF on the areas described in paragraphs 22-27, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are twenty violations of FIFRA section 12(a)(2)(G).

COUNTS 21-40

30. On June 1, 2004, Respondent applied the pesticide Spintor 2SC at the Anderson, Borini, Frazier, Frye, HCT, Moore, and Wood areas.
31. On June 2, 2004, Respondent applied the pesticide Spintor 2SC at the Dickenson, HCT, TFI (blocks 1N, 25, 2W, 3, and 4), TFI blocks (blocks 5, 6, 7, 8s, and 9), and Unfred areas.
32. On June 3, 2004, Respondent applied the pesticide Spintor 2SC at the EOM, Hosburgh, TFI (blocks 1 and 2E), and TFI (block 21), areas.
33. On June 4, 2004, Respondent applied the pesticide Spintor 2SC at the EOM area.
34. On June 5, 2004, Respondent applied the pesticide Spintor 2SC at the HCT and Zimmat areas.

35. On June 9, 2004, Respondent applied the pesticide Spintor 2SC at the EOM area.

36. On June 29, 2004, and June 30, 2004, Respondent was not displaying specific information about the June 1st, June 2nd, June 3rd, June 4th, June 5th, and June 9th applications of Spintor 2SC (Counts 21-40) as required by the WPS requirement codified in 40 C.F.R. section 170.122.

37. Since Respondent failed to display specific information about the June 1st, June 2nd, June 3rd, June 4th, June 5th, and June 9th applications of the pesticide Spintor 2SC on the areas described in paragraphs 30-35, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are twenty violations of FIFRA section 12(a)(2)(G).

COUNT 41

38. On June 25, 2004, Respondent applied the pesticide Surround WP at the Schroeder area.

39. On June 29, 2004, and June 30, 2004, Respondent was not displaying specific information about the June 25th application of Surround WP (Count 41) as required by the WPS requirement codified in 40 C.F.R. section 170.122.

40. Since Respondent failed to display specific information about the June 25th application of the pesticide Surround WP at the Schroeder area, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

COUNTS 42-49

41. On June 6, 2004, Respondent applied the pesticide Warrior at the Massey and Moore areas.

42. On June 8, 2004, Respondent applied the pesticide Warrior at the Derrick, DWT, Potter, and Schroeder areas.

43. On June 10, 2004, Respondent applied the pesticide Warrior at the Searcy and TFI areas.

44. On June 29, 2004, and June 30, 2004, Respondent was not displaying specific information about the June 6th, June 8th, and June 10th, applications of Warrior (Counts 42-49) as required by the WPS requirement codified in 40 C.F.R. section 170.122.

45. Since Respondent failed to display specific information about the June 6th, June

8th, and June 10th applications of the pesticide Warrior at the areas described in paragraphs 41-43, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are eight violations of FIFRA section 12(a)(2)(G).

PROPOSED CIVIL PENALTY

46. For private applicators or other persons, FIFRA authorizes the assessment of a civil penalty of up to \$1,200 for each offense of the Act and the Debt Collection Improvement Act of 1996. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this complaint, EPA proposes penalties in the range of \$720 to \$960 for each count, for a total penalty of \$37,200. The exact penalty amount for each count can be found in Complainant's Exhibit Number 1.

47. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. For Forty-Nine violations, the maximum would be \$58,800.

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

Date: 9/27/04 By: SIGNED
Elisabeth Evans, Director
Technical Enforcement Program

Date: 9/29/04 By: DAVID J. JANIK
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 9/24/2004 By: SIGNED
Eduardo Quintana, Enforcement Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to:

Charles W. Talbott
Talbott Farms, Inc.
3782 F 1/4 Road
Palisade, CO 81526

9/29/04_____

Date

Judith M. McTernan_____

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON September 29, 2004.